

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No.: EB-11-SE-102
)	
Emigrant Storage LLC)	NAL/Acct. No.: 201232100034
)	
)	FRN: 0021058938

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 31, 2012

Released: July 31, 2012

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (NAL), we find Emigrant Storage LLC (Emigrant), former licensee of Private Land Mobile Radio Service (PLMRS) station WPKM212, Reno, Nevada, apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (Act),¹ and Sections 1.903(a) and 1.949(a) of the Commission's rules (Rules).² The noted apparent violations involve Emigrant's operation of PLMRS station WPKM212 for more than nine years without the required Commission authority and its associated failure to timely file an application to renew the station's license.

II. BACKGROUND

2. On April 15, 1997, Emigrant was granted a license to operate station WPKM212 for five years through April 15, 2002, the expiration date of the station's license.³ On January 22, 2002, the Commission's Wireless Telecommunications Bureau (Wireless Bureau) sent Emigrant a courtesy "renewal reminder" notice for station WPKM212, alerting Emigrant that it was required to file a renewal application for the station prior to the expiration of the station's license if it planned to continue operation.⁴ Emigrant failed to file a renewal application for station WPKM212 prior to the license expiration date. In the absence of such filing, Emigrant's license for station WPKM212 automatically terminated on the April 15, 2002 expiration date.⁵ More than nine years later, on July 31, 2011, Emigrant filed with the Wireless Bureau a request for Special Temporary Authority (STA), stating that it had recently discovered that its license for station WPKM212 had expired and that the STA was necessary for its continued operation.⁶ On August 3, 2011, the Wireless Bureau granted the STA until January 30, 2012

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a), 1.949(a).

³ See <http://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=1748504>.

⁴ See Automated Renewal Reminder Letter from the FCC Wireless Telecommunications Bureau, to Emigrant Storage LLC, Reference No. 1250367 (Jan. 22, 2002).

⁵ See 47 C.F.R. § 1.955(a)(1) (stating that "[a]uthorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed.").

⁶ See File No. 0004821825.

under call sign WQOB527.⁷ On August 23, 2011, Emigrant filed an application for a new PLMRS station license, which was granted on October 3, 2011.⁸

3. Because it appeared that Emigrant operated station WPKM212 after the expiration of its license, the Wireless Bureau referred this matter to the Enforcement Bureau for investigation and possible enforcement action. On April 26, 2012, the Spectrum Enforcement Division of the Enforcement Bureau issued a letter of inquiry (LOI) to Emigrant, directing the company to submit a sworn written response to a series of questions relating to Emigrant's failure to file an application for renewal of the WPKM212 license and to Emigrant's continued operation of the station after the expiration of the station license.⁹

4. Emigrant responded to the LOI on May 3, 2012 (LOI Response).¹⁰ In its LOI Response, Emigrant states that on or about July 19, 2011, Emigrant received a telephone call from another wireless operator stating that Emigrant's radio communications "were coming through" on the operator's frequencies and that Emigrant's license for station WPKM212 had expired.¹¹ According to Emigrant, its failure to renew the license for station WPKM212 was an "oversight."¹² Emigrant also admitted that it continued to operate the station after the April 15, 2012 license expiration date, explaining that it was not aware that the station license had expired.¹³ Emigrant asserts that it filed its STA request "promptly" after the telephone call from the other wireless operator and that its STA was granted approximately two weeks later.¹⁴

III. DISCUSSION

5. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, a Commission-granted authorization.¹⁵ Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations "no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration."¹⁶ Absent a timely filed renewal application, a wireless radio station license automatically terminates.¹⁷

6. As a Commission licensee, Emigrant was required to maintain its authorization in order to continue to operate station WPKM212. Emigrant has admitted that it failed to renew its license and that it continued to operate station WPKM212 without Commission authority for more than nine years,

⁷ The Wireless Bureau granted the STA without prejudice to any enforcement action related to the unauthorized operation of station WPKM212. *See id.*

⁸ *See* File No. 0004850131.

⁹ *See* Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Bill Manke, Owner, Emigrant Storage Corporation (Apr. 26, 2012).

¹⁰ *See* Letter from Carol Reno, Supervisor, Emigrant Storage, to Susan German, Spectrum Enforcement Division, FCC Enforcement Bureau (May 3, 2012).

¹¹ *Id.*

¹² *Id.* at 1-2 (claiming that it did not receive the courtesy renewal reminder and that the company "had a change of personnel over the years").

¹³ *Id.*

¹⁴ *Id.* at 2.

¹⁵ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

¹⁶ 47 C.F.R. § 1.949(a).

¹⁷ *Id.*

from April 15, 2002, when the license expired, until August 3, 2011, when its request for STA was granted. Although Emigrant argues that its failure to file for the renewal of the station's authorization was an "oversight," it is well established that administrative oversight or inadvertence is not a mitigating factor.¹⁸ By operating station WPKM212 after the license had expired, Emigrant apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. Emigrant also apparently violated Section 1.949(a) of the Rules by failing to timely file a renewal application for station WPKM212.

7. Section 503(b)(1)(B) of the Act¹⁹ and Section 1.80(a) of the Rules²⁰ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Rules, and "repeated" means more than once or for more than one day.²¹ Based on the record before us, it appears that Emigrant's apparent violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules are both willful and repeated.²²

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors such as "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²³ Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and a base forfeiture amount of \$3,000 for failure to file required forms or information.²⁴ The Commission has held that a licensee's continued operation without authorization and its failure to timely file a renewal application constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²⁵ Accordingly, we

¹⁸ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (*Southern California*) (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

¹⁹ 47 U.S.C. § 503(b)(1)(B).

²⁰ 47 C.F.R. § 1.80(a).

²¹ See 47 U.S.C. § 312(f)(1), (2). See also *Southern California*, 6 FCC Rcd at 4388, para. 5 (the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under Section 503(b) of the Act).

²² While Section 503(b)(6) of the Act generally bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL, we may consider the fact that Emigrant's misconduct occurred over an extended period (during the more than nine year period between 2002 and 2011) to place "the violations in context, thus establishing the licensee's degree of culpability and the continuing nature of the violations." *Roadrunner Transportation Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72, para. 8 (2000); see also *BASF Corporation*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17302, para 9 (Enf. Bur. 2010) (forfeiture paid) (*BASF Corporation*); *Call Mobile*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 74, 76, para 10 (Enf. Bur. 2011) (response pending) (*Call Mobile*). The apparent unlawful operation in this case continued from April 15, 2002 (the license expiration) through August 3, 2011 (the STA grant). Therefore, the forfeiture amount we propose herein relates to Emigrant's apparent continuing violations that ceased during the past year.

²³ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17100, para. 27 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

²⁴ 47 C.F.R. § 1.80(b). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22 (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act").

²⁵ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7438, para 15 (2004).

herein propose separate base forfeiture amounts for Emigrant's violations—\$10,000 for Emigrant's continued operation of station WPKM212 without Commission authority and \$3,000 for Emigrant's failure to file the renewal application for its station within the time period specified in Section 1.949(a) of the Rules, for a total base forfeiture of \$13,000.

9. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that a significant upward adjustment of the base forfeiture is warranted. In this regard, we are particularly mindful that Emigrant's apparent unlawful operation continued for more than nine years—from April 15, 2002, the date that the license for station WPKM212 expired, until August 3, 2011, the date that Emigrant's STA was granted.²⁶ In fact, the period of unauthorized operation was nearly *twice* the length of the initial license term. As the Commission has emphasized, “[a]ll licensees are responsible for knowing the terms of their licenses and for filing a timely renewal application if they seek to operate beyond that term.”²⁷ In addition, we decline to downward adjust the forfeiture based on Emigrant's claims that the violation resulted from “oversight” and a change in personnel.²⁸ Consistent with longstanding precedent, Emigrant's lack of knowledge or erroneous belief does not warrant a downward adjustment of the forfeiture.²⁹ We note, however, that the severity of the apparent violations is

²⁶ In the past, the Commission has upwardly adjusted the base forfeiture in cases where the unauthorized operation continued for an extended period of time. See *BASF Corporation*, 25 FCC Rcd at 17303, para. 11 (five years of unauthorized operation); *Shubat Transportation Company*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3782, 3786, para. 13 (Enf. Bur. 2011) (six years of unauthorized operation); *Call Mobile*, 26 FCC Rcd at 77, para. 12 (two and a half years of unauthorized operation). In a recent decision, however, one of the Bureau's divisions addressed an apparent violation of Section 301 of Act involving an extended period of unauthorized operation by proposing a limited upward adjustment. See *Harrah's Atlantic City Operating Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd. 5153 (Enf. Bur., Northeast Region 2011) (*Harrah's*). On reflection, we believe that the forfeiture penalty proposed in *Harrah's* was unduly low in light of the nearly ten years of continuous unauthorized operation and other circumstances in the case. See 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(5) (listing circumstances and extent of a violation as factors in assessing a forfeiture). The relative duration of a violation is a critical factor; for example, we generally would propose a substantially higher forfeiture for a violation lasting nearly a decade than for a violation lasting for two months. In doing so, we avoid creating perverse incentives and encourage PLMRS and other licensees to monitor their license expiration dates and to timely seek renewal or otherwise take appropriate steps to quickly come into compliance with FCC rules. See *BASF Corporation*, 25 FCC Rcd at 17303, para. 10 (noting that reduced forfeiture amounts applied in past cases do not appear to be creating sufficient incentives for all PLMRS licensees to comply).

²⁷ See *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 13 FCC Rcd 21027, 21071, para. 96 (1998) (noting that the renewal reminder letter is a “convenience to licensees [and] does not in any way absolve licensees from timely filing their renewal applications”). As a result, Emigrant's assertion that it did not receive the courtesy renewal reminder does not mitigate its apparent violation. See LOI Response.

²⁸ See *supra* note 12 and accompanying text.

²⁹ See, e.g., *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846, 2846, para. 5 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its “prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed . . . ignorance of the law is [not] a mitigating factor”); *Lakewood Broad. Serv., Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438, para. 6 (1972) (denying a mitigation claim of a broadcast licensee who asserted an unfamiliarity with the station identification requirements, stating that licensees are expected “to know and conform their conduct to the requirements of our rules”); *Kenneth Paul Harris, Sr.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 12933, 12935, para. 7 (Enf. Bur. 2000) (denying a mitigation claim of a broadcast licensee, stating that its ignorance of the law did not excuse the unauthorized transfer of the station); *Maxwell Broad. Group, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 784, 784, para. 2 (Mass Med. Bur. 1993) (denying a mitigation claim of a noncommercial broadcast licensee, stating that the excuse of “inadvertent[ce], (continued....)

slightly mitigated by Emigrant's non-dilatory actions in seeking the necessary operating authority when confronted by a third party with evidence of its expired license. While the record indicates that it was not Emigrant's own diligence that led to the discovery of the violation, Emigrant's efforts to come into compliance preceded the Bureau's investigation and the initiation of enforcement action.³⁰ Based on all the factors and evidence, including the extended duration of the violation, we propose an aggregate forfeiture of \$20,000.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³¹ and Sections 0.111, 0.311 and 1.80 of the Rules,³² Emigrant Storage LLC **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for the willful and repeated violation of Section 301 of the Act³³ and Sections 1.903(a) and 1.949(a) of the Rules.³⁴

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³⁵ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Emigrant Storage LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 14 below.

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Emigrant Storage LLC shall send electronic notification of payment to Susan German and Ricardo Durham at Susan.German@fcc.gov and Ricardo.Durham@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure

(...continued from previous page)

due to inexperience and ignorance of the rules ... are not reasons to mitigate a forfeiture" for violation of the advertisement restrictions).

³⁰ See 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Adjustment Criteria for Section 503 Forfeitures* (establishing "good faith or voluntary disclosure" as a downward adjustment factor).

³¹ 47 U.S.C. § 503(b).

³² 47 C.F.R. §§ 0.111, 0.311, 1.80.

³³ 47 U.S.C. § 301.

³⁴ 47 C.F.R. §§ 1.903(a), 1.949(a).

³⁵ 47 C.F.R. § 1.80.

³⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e mail, ARINQUIRIES@fcc.gov.

14. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules.³⁷ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be emailed to Susan German at Susan.German@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

15. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail, return receipt requested to William A. Manke, Sr., Owner, Emigrant Storage LLC, 2500 Longley Lane, Reno, NV 89502.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief
Enforcement Bureau

³⁷ 47 C.F.R. §§ 1.80(f)(3), 1.16.